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Application/Control Number: 10/064,478
Title: AVS Liquid Feed Terminal
Art Unit: 1724

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Applicant: POWELL, ET AL.
Attorney Docket No. 02-RIC-02

**IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE**

In re the Application of
James R. Powell and Morris Reich
Attorney Docket No.: 02-RIC-02
Title: AVS Liquid Feed Terminal
Filed: July 18, 2004
For: Apparatus and Process of Using

Art Unit: 1724
Examiner: Robert J. Popovics
Application/Control Number: 10/064,478
Office Action: March 2, 2005
Reply Due: June 2, 2005

Commissioner for Patents
Alexandria, VA 22313-1450

Date of Reply: May 31, 2005

Sir:

**Applicant's Reply to USPTO Rejection/Objection
Amendment to the Claims**

CLAIM REJECTION: ANTICIPATION. The USPTO office action rejects claims

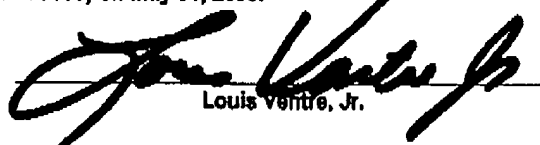
1-4, 11-15 and 17-20 based on anticipation by Lee (US 5,874,006, citing the endplates (24) and (25). The remainder of the claims are objected to as depending from rejected claims, but otherwise allowable if rewritten in independent form.

INTERVIEW SUMMARY. Applicant's attorney, Louis Ventre, Jr., held an

Interview with Examiner Robert J. Popovics on March 9, 2005 and reviewed all of the

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (703-872-9306) on May 31, 2005.


Louis Ventre, Jr.

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1 claims, the operation of the invention and the outstanding Office Action. Applicant's
2 Attorney questioned the presence of a "dual-walled" vertical tube in the Lee reference
3 (US 5,874,006) cited in the March 2, 2005 Office Action.

4 The Examiner indicated that the wall (52) illustrated in Figure 2, was seen to
5 meet this limitation, with the upper portion of that wall not being porous and the lower
6 portion being porous. The Examiner suggested limiting the claim to a vitrification
7 system / environment to overcome the rejection of Lee under section 102.

8 Applicant's attorney observed that this element (52) also had a non-porous
9 bottom segment. Because the element (52) has three walls it is not the same as
10 applicant's dual walled tube.

11 "A claim is anticipated only if each and every element as set forth in the claim is
12 found, either expressly or inherently described, in a single prior art reference." See
13 MPEP §2131 (citations omitted).

14 Thus, the cited reference is inapplicable and Applicant requests that the rejection
15 be withdrawn based on this difference in the elements. Withdrawal of the rejection is
16 considered important and relevant based on the *Festo* decision and Applicant's desire
17 and intention to retain protection of equivalents to Applicant's invention.

18 At the interview, Applicant's attorney indicated an intention to propose an
19 amendment incorporating the recommended limitation in the preamble. Applicant
20 believes an amendment to the preamble of the base claim is appropriate,
21 notwithstanding the anticipated withdrawal of the anticipation rejection. Applicant freely

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1 requests such amendment not for the purpose of overcoming the rejection or for
2 purposes of patentability, but only because the claims after amendment more
3 accurately describe applicant's invention. Accordingly, in addition to Applicant's request
4 for withdrawal of the rejection, Applicant also requests amendment to the claims, as
5 attached hereto.

6 Examiner noted error in the Loshe patent citation in the IDS. Applicant's
7 attorney noted a prior communication to Examiner Popovics on July 28, 2004 correcting
8 the patent number and date shown in the IDS for the Loshe patent to patent number
9 6,352,159 granted on March 5, 2002. Applicant's attorney acknowledged that a revised
10 IDS should have been submitted and now requests that the Loshe patent be
11 considered.

12 **CONCLUSION ON REJECTION.** The anticipation rejection, based on a
13 reference that is not identical in each and every element of Applicant's invention, should
14 be withdrawn. In addition, Applicant requests amendment of the base claim to
15 reference the field of vitrification in the preamble, as was suggested to clarify the
16 intended field of the invention.

17 **INFORMATION DISCLOSURE STATEMENT.** The Office Action notes that the
18 patents cited in the specification were not in an Information Disclosure Statement (IDS)
19 and will not be considered. Attached to the Office Action was the IDS with a line
20 through the Loshe patent indicating that it was not considered.

21 **IDS RESPONSE.** Applicant acknowledges and accepts that the patents cited in

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1 the specification were not in the Information Disclosure Statement and will not be
2 considered. The patents cited in the specification are for background discussion.
3 Applicant's timely submitted IDS listed patents submitted for consideration by the
4 Office.

5 **ALLOWABLE SUBJECT MATTER.** The Office Action mentions that Claims 5-
6 10, 16 and 21 are objectionable because they depend from a rejected base claim. The
7 Office Action states that they would be allowable if rewritten in independent form.

8 **APPLICANT'S RESPONSE ON ALLOWABLE SUBJECT MATTER.** Applicant
9 notes that the grounds for rejecting the base claim have been overcome and the
10 rejection should be withdrawn. Applicant also notes that the proposed amendment to
11 the preamble of the base claim clarifies the intended field of the invention. Therefore,
12 applicant observes that the grounds for the objection have been removed, the amended
13 claims better describe Applicant's invention, and the amended claims should be
14 allowable.